

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

INDECK KEYSTONE ENERGY, LLC, a
Delaware limited liability company,

Plaintiff

v.

VICTORY ENERGY OPERATIONS, LLC, a
Delaware limited liability company,

Defendant.

CIVIL ACTION

No. 04-CV-325E

Judge Sean J. McLaughlin

**DEFENDANT VICTORY ENERGY OPERATIONS, LLC'S
APPENDIX OF EXHIBITS IN OPPOSITION
TO PLAINTIFF INDECK KEYSTONE ENERGY, LLC.'S
MOTION FOR PARTIAL SUMMARY JUDGMENT ON
VICTORY ENERGY OPERATIONS, LLC'S COUNTERCLAIMS**

<u>NUMBER</u>	<u>EXHIBIT</u>
1	January 7, 2003 License Agreement (without Annexes)
2	Deposition of Alan Christian (38, 43, 46-49, 53-54, 92-94)
3	Deposition of Chris T. Petcos (26-36, 40-44, 45-48, 51-53, 58)
4	Deposition of John C. Viskup, Jr. (23-25, 151-161)
5	Deposition of VEO's 30(b)(6) (Viskup) (23-24, 37-42)
6	Deposition of VEO's 30(b)(6) (White) (176)
7	Deposition of Mark J. White (72, 174-75, 255-256)



LICENSE AGREEMENT

This agreement is made in Erie, Pennsylvania, USA this 7th day of, January 2003 by and between Erie Power Technologies, Inc., 5300 Knowledge Pkwy. Ste. 200, Erie, PA, 16510 a corporation established under the laws of Ohio, U.S.A., (hereinafter, "Licensor") and Victory Energy Operations, LLC, 302 East 5th Avenue, Unite "D", Owasso, OK, 74055, a corporation established under the laws of Delaware, U.S.A. (hereinafter "Licensee") hereinafter referred to as "Party/Parties".

WITNESSETH

WHEREAS, Licensor has for many years been engaged in researching, designing, engineering and manufacturing certain Products (as defined hereinafter) and has acquired considerable experience therein; and

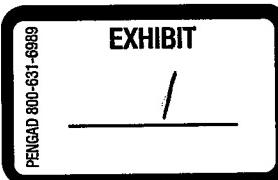
WHEREAS, Licensee intends to manufacture and sell said Products and wishes to secure access to and use of Licensor Technical Information (as defined herein) for said purpose to the extent permitted herein; and

NOW, THEREFORE, in consideration of the mutual premises set forth herein, IT IS AGREED AS FOLLOWS:

CLAUSE 1

Definitions

- 1.a) "Products" shall mean natural circulation, industrial watertube package steam generators with a steam capacity range beginning at 29,000 pph up to and including 150,000 pph. Products shall include but not be limited to the items set forth in Annex. 1. If Licensee receives inquires which are not in Licensor's range of Products, subject to and prior notice to Licensor, Licensee will be free to enter into separate alternative agreements.
- 1.b) "Technical Information" shall mean any facts, data, know how, formula, procedures, techniques or advice, whether written or oral and regardless of form (including reports, letters, designs, drawings, specifications, training and operational manuals, photographs, tapes, diagrams, patent applications, Software (as defined herein), and any related documentation). Whether owned by Licensor, used by Licensor under license with the right to sublicense, or in the public domain, relating to design, manufacture, testing, operation, and repair of the Products, including but not limited to information set forth in Annex II of this Agreement. "Technical Information" may be patentable or unpatentable, and if patentable, need not be patented. Improvements may also be protected under the copyright, trade secret, or other applicable legal principles.
- 1.c) "Technology Disclosure Fee" shall mean payment due to Licensor for the disclosure of the Technical Information and for the supply of the technical assistance under Clause 3 and Clause 4 hereof.





- 1.d) "Exclusive Territory" shall mean United States, Canada and Mexico.
- 1.e) "Net Selling Price" shall mean the actual selling price of Products, ex-works, excluding field supervision prices, taxes (directly applied to the selling price) and equipment including water treatment systems and associated equipment (i.e. pumps deaerators etc.) continuous blowdown heat recovery systems, spare parts (directly applied to the selling price) freight and insurance charges to destination, FOB charges or costs of parts supplied by Lessor, if any.
- 1.f) "Effective Date" shall mean the date identified in the first sentence of this Agreement.
- 1.g) "Contract Year" as used herein shall mean each one year period commencing with the Effective Date of this Agreement or anniversary dates.
- 1.h) "Improvements" shall mean all modifications, variations, revisions, and enhancements of the Products, or methods or processes for manufacturing the Products, and all Technical Information relating thereto, which either Lessor or Licensee may develop, acquire, or acquire control of and commercially exploit during the term of this Agreement and which Lessor determines, in its reasonable judgment: (1) improve Product Performance and/or manufacturing costs of Products; (2) expand commercial applications of the Products or provide a superior substitute for any Product; or (3) increase marketability and/or commercial acceptance of the Products. "Improvements" may be patentable or unpatentable, and if patentable, need not be patented. Improvements may also be protected under copyright, trade secret, or other applicable legal principles.
- 1.i) "Software" shall mean computer programs, in whatever form and including related documentation, owned or licensed by Lessor and used in connection with the design, manufacture, testing operation or repair of Products.
- 1.j) "Standard Parts" shall mean parts which are made for other products as well as for the Products covered by this Agreement, and which require no change in design or specification to become parts for the products covered by this Agreement.
- 1.k) "Mark" shall mean the trademarks " Erie Power Technologies, Inc. or EPTT" and shall include any related designs, logos, or other descriptive devices customarily used by Lessor in connection with the Mark.
- 1.l) "Lessor Confidential Information" shall mean any data or information disclosed hereunder (whether written, oral or graphical) that relates to Lessor's products, technology, research, development, customers or business activities, and which is confidential or proprietary to or a trade secret of Lessor. Lessor Confidential Information shall not include any information, data or material which:



(a) Licensor expressly agrees in writing is free of any non-disclosure obligations;
 (b) at the time of disclosure to Licensee was known to Licensee (as evidenced by documentation in Licensee's possession) free of any non-disclosure obligations;
 (c) is independently developed by Licensee (as evidenced by documentation in Licensee's possession); (d) is lawfully received by Licensee, free of any non-disclosure obligations, from a third party having the right to so furnish such Licenser Confidential Information; or (e) is or becomes generally available to the public without any breach of this Agreement or unauthorized disclosure of such Licenser Confidential Information by Licensor

CLAUSE 2

Grant of Selling, Manufacturing and Related Rights

2.a) Selling Rights. Licensor hereby grants to Licensee:

- (i) The exclusive license to manufacture the Products and to offer, sell, and install the Products so manufactured, and to use Technical Information in connection therewith, within the Exclusive Territory. Licensee understands and agrees, however that Licensor reserves the right to itself to offer, sell, manufacture, and install the Products in the Exclusive Territory in the following cases:
 - 1. if explicitly requested by the client(s), or
 - 2. Licensee's capabilities to meet the requirements by any client are significantly diminished as determined by mutual agreement of the parties.

In these cases, the Parties will also agree on the best practical cooperation and support to be provided by Licensee and Licensee's most reasonable offer/order share.

2.b) Manufacturing Rights. Licensor hereby grants to Licensee an exclusive license to manufacture or have manufactured the Products using the Technical Information for installation in the Territory except for what provided in Clause 2.a.i. Licensee may not manufacture or have manufactured, the Products or any component part thereof, anywhere outside of Territory without the prior written consent of Licensor.

2.c) Conditions of Grant of Rights.

- (i) Licensee expressly agrees that it will not sell, transfer, sublicense or disclose the Technical Information to any third party except as expressly provided in this Agreement and subject to the prior written consent of Licensor. The grant of rights pursuant to this Agreement shall not extend to technology (patented or unpatented), manufacturing information, or know-how possessed by Licensor regarding the Products.



- (ii) As a condition of the licenses granted herein, Licensee agrees that it will exercise its best efforts to promote the offer, sale, and installation of Products manufactured under the Agreement in the Territory. Whenever Licensee receives any inquiry regarding the purchase of installation of Products outside of Territory, Licensee will promptly notify Lessor, and the parties shall thereafter mutually agree which one of them shall submit a bid in response to such inquiry.

- (iii) During the term of this Agreement, Licensee shall not engage in the manufacture of products that are in competition or may compete with the Products licensed under this Agreement without the advance written consent of Lessor except as follows; firetube boilers with a steam capacity up to and including 75,000 pph at various pressures and steam temperatures.

- (iv) Nothing in this Agreement shall be construed to establish by expression or implication that either Party to this Agreement is acting as, or is deemed to be, the agent for the other Party.

CLAUSE 3

Delivery of Technical Information/Technical Assistance

- 3.a) Lessor shall furnish Licensee with the Technical Information indicated within Annex II at Lessor's office in Erie, Pennsylvania within sixty (60) days of receipt of the initial payment of the Technical Disclosure Fee. Lessor will provide Licensee access via remote connection to Lessor's computer system so that Licensee may properly rate the Product. The rating system is a Fortran based program, designed to run on UNIX workstations. If Licensee elects to run the program on a Windows based system, an X-Windows emulator is required on Licensee's computer system to properly display the user interface for the program. It is the responsibility of the Licensee to provide the X-Windows emulator.

- 3.b) Each item of Technical Information furnished by Lessor shall be furnished in a form utilized by Lessor and such information shall be as detailed as Lessor would furnish to its own personnel for use in connection with the Products.

- 3.c) With the aid of the Lessor-provided Technical Information, Licensee will, in case of an order, make its own workshop drawings of Products, as well as calculations of performance of Products, except for information and output from the Lessor's natural circulation computer program. (Lessor will provide the foregoing assistance as outlined in the Annexes until a reasonable period of training and Software transfer is complete. This assistance will include



reasonable thermal design support, other mechanical and general proposal support from Licensor's offices sufficient for preparation of proposals by Licensee for the Licensee's clients).

- 3.d) At the request of Licensee, Licensor will review Licensee's workshop drawings and calculations for compliance with Licensor's design at Licensee's applicable service rate in effect at the time such service is rendered. This support will be modified by Licensor free of charge to Licensee for the first two orders to review for general compliance with Licensor's standard. Licensee will be responsible for making and implementing any alterations of the design of the Products required by codes, rules, or other requirements of the country of manufacture or the country of delivery or because of shop practices within the Licensee's plant(s).
- 3.e) Upon Licensee's reasonable request, Licensor shall provide, without any additional payment to Licensor, reasonable technical assistance to Licensee by written or telephone response relating to the application and interpretation of the Technical Information furnished by Licensor under this Agreement.
- 3.f) On reasonable request by Licensee, Licensor will give special engineering advice regarding planning, design, manufacturing, installation or operation of Products by Licensee at Licensor's applicable service rate in effect at the time service is rendered.
- 3.g) All amounts payable to Licensor under this Clause shall be due in United States Dollars (USDLR) within thirty (30) day after receipt by Licensee of Licensor's invoice. Payments will be by wire transfer or issued by company check.
- 3.h) Annex III here to set forth Licensor's contract rates for technical assistance as of the Effective Date, provided however, that rates for technical assistance are subject to prior agreement between the Parties on reasonable escalation throughout the term of this Agreement.

CLAUSE 4

Personnel Support, Training, and Technical Assistance

- 4.a) During the life of this Agreement, at the reasonable requests of Licensee, Licensor will admit to that portion of its facility a reasonable number of Licensee's employees to inspect and become acquainted with Licensor's engineering discipline, working methods, and manufacturing processes relating to the Products. Such visits shall be free of charge to Licensee for up to, one (1) month of training during the first year of this Agreement. Licensor will conduct periodic Licensee meetings during the term of this Agreement to provide additional training and exchange of information. Licensor will provide Licensee with any other Technical Information in respect of the manufacture of Products, in



connection with such visits, on the condition that the regular course of business of Lessor is not interfered with thereby, and provided that all expenses of such employees of Licensee will be borne and paid for by Licensee. All employees of Licensee who participate in on-site training at Lessor will execute acknowledgements that they are aware of a bond by the secrecy provisions of this Agreement and that all information disclosed during on-site training constitutes Technical Information hereunder. Licensee assumes all responsibility for any health, accident, or other liability insurance coverage for all employees and other representatives of Licensee who participate in such on-site visits to Lessor's premises.

- 4.b) Lessor will provide personnel support to Licensee by sending a Lessor representative to Licensee's project team as technical presentations of the Products and joint technical meetings between Licensee and its clients as required by Licensee, free of charge to Licensee, for the first two (2) projects, limited to, two (2) day trip and one trip per project. For subsequent Lessor's personnel support, Licensee will pay to Lessor standard per diem rate set forth in Annex III or as may be in effect at the time the support is provided.
- 4.c) All amounts payable under this Clause shall be due and payable (USDLR) within thirty (30) days after receipt by Licensee of Lessor invoice.

CLAUSE 5

Secrecy

- 5.a) All of the Technical Information supplied by Lessor under this Agreement shall be for the exclusive use of Licensee (and its employees on a need to know basis) and Licensee agrees that Technical Information shall not be given, sold, disclosed, or otherwise made available in any fashion to any other firm, company, or person (including customers and prospective customers of Licensee) except with the prior written consent of Lessor. Licensee shall not use any of the Technical Information supplied by Lessor under this Agreement for any purpose except as set forth in Clause 2 of this Agreement. In the event that Licensee becomes legally obligated or compelled to disclose any Technical Information, it will provide Lessor with prompt written notice of same and cooperate with Lessor in its efforts to obtain a protective order or other confidential treatment.
- 5.b) Notwithstanding the foregoing, no secrecy obligation herein shall apply to Technical Information which:
 - (i) At the time of disclosure is generally available to the public;
 - (ii) After disclosure by Lessor becomes generally available to the public by publication or otherwise through no fault of Licensee;



- (iii) Was in Licensee's possession prior to the disclosure hereunder and which was not acquired directly or indirectly from Licensor and which was acquired without being subject to any restriction as to disclosure or use;
 - (iv) Was received by Licensee from a third party imposing no obligation of confidentiality and who did not acquire any such information directly or indirectly from Licensor under an obligation of confidentiality.
- 5.c) Licensee requires all of its subcontractors to agree in writing to be bound by the provisions of this Clause 5.
- 5.d) The provisions of this Clause 5 shall apply with equal force with respect to improvements with Licensor supplies to Licensee.
- 5.e) Licensee may, from time to time, furnish the Licensor with certain Licensee Confidential Information. Licensor will use the same care, but at a minimum reasonable care, to avoid disclosure, publication or dissemination of Licensee Confidential Information as it uses with its own similar confidential information which it does not wish to disclose, publish or disseminate. Licensee Confidential Information shall not be used except as expressly permitted under this Agreement nor disclosed to any persons other than the employees and authorized consultants of Licensor (if any) who have a need to know and who have been informed of the their obligation to maintain its confidentiality prior to such disclosure, and who have entered into written confidentiality agreements restricting their use and disclosure of such information, except for the uses expressly permitted in this Agreement. The disclosure of Licensee Confidential Information does not grant to Licensor any license or rights to any trade secrets or under any patents or copyrights. In the event that Licensor becomes legally obligated or compelled to disclose any Licensee Confidential Information, it will provide Licensee with prompt written notice of same and cooperate with Licensee in its efforts to obtain a protective order or other confidential treatment. Licensor will under no circumstances furnish any portion of the Licensee Confidential Information that it is not legally required to produce and, to the extent that Licensor is required to produce any Licensee Confidential Information, it will use its best efforts to obtain reliable assurances that confidential treatment will be accorded to the Licensee Confidential Information that is disclosed.

CLAUSE 6

Compensation

In consideration of Licensee rights granted herein, supply of Technical Information, and the supply of technical assistance, Licensee shall pay to Licensor:

- 6.a) **Technology Disclosure Fee:** A lump sum of \$50,000 (US) payable per the schedule defined in paragraph 6 (b) below.



- 6.b) **Payment Schedule:** Payment for the Technology Disclosure Fee will be payable as follows:
- (i) \$10,000 within thirty (30) days from the Effective Date of this Agreement.
 - (ii) \$20,000 within twelve (12) months from the Effective Date of this Agreement.
 - (iii) A final payment of \$20,000 within eighteen (18) months from the Effective Date of this Agreement.
- 6.c) Royalties: On the schedule set forth in Clause 7, Licensee will pay to Lessor, in addition to the Technology Disclosure Fee, a continuing royalty, which shall be computed at 4% of the Net Selling Price, as defined in Clause 1.e hereof, of each Product manufactured and sold by Licensee.
- 6.d) The compensation rates herein provided for shall continue for the duration of this Agreement, unless altered in accordance with the terms of Clause 19 hereof.

CLAUSE 7

Payments and Accounting

- 7.a) The Royalties defined in Clause 6 will be paid in accordance with the following schedule:
1. Sixty percent (60%) within three (3) months after the receipt of the purchase order or upon initiation of manufacture of the Product by Licensee for this purchase order, whichever occurs sooner.
 2. Forty percent (40%) upon materially complete shipment of the Product under the specific purchase order.
- 7.b) A "Semi-Annual" Statement" (as hereafter defined) shall be submitted by Licensee to Lessor for period ending with the end of each half Contract Year for the duration this Agreement, listing Products upon which manufacturing by Licensee has been completed in such period and an addendum listing Products upon which manufacturing is not complete. The Semi-Annual Statement shall identify for each completed or incomplete Product:
- (i) Date of Order
 - (ii) Name of Client
 - (iii) Destination
 - (iv) Performance Data to include steam capacity and conditions and the number of industrial watertube package steam generators
 - (v) Date of completion or scheduled completion of the Products
 - (vi) Purchase order price and portion relevant Net Selling Price



- (vii) The royalty amount payable thereon
- 7.c) All amounts, which Licensee owes Licenser under this Clauses 6 and 7, will be paid by Licensee to Licenser in U.S. Dollars.
- 7.d) Licensee will advise Licenser of each sale of a Product by Licensee by forwarding to Licenser a copy of each order immediately after said order has been placed with Licensee.
- 7.f) Licensee shall, during the term of this Agreement, keep accurate and complete records, books, and files of all Products and orders for Products, including the identifying data required in the Semi-Annual Statement. These records shall be made available for inspection and copying by authorized representatives of Licenser during any normal business day; provided however, that an inspection of Licensee's records shall be made by Licenser only upon and after giving to Licensee at least ten (10) days written notice by Licenser of Licenser's intention to inspect such records.
- 7.g) If an audit by Licenser reveals a shortfall in Royalty payments exceeding five (5) percent of Royalties owing then Licensee shall pay any such shortfall, plus interest thereon at the US Federal Reserve Prime Rate plus three percent (3%) and the reasonable cost of the audit.

CLAUSE 8

Modifications to Products by Licensee

- 8.a) Licensee will have the right to modify the Products; provided, however, that such modifications will not diminish the reliability and the performance of the said Products. Licensee will submit to Licenser such plans for modifications for prior written approval by Licenser except for the alterations as defined in Clause 3 (e).
- 8.b) Licensee shall assume the entire responsibility for any changes in design or material specifications made by Licensee, and shall hold Licenser harmless from any liability thereafter, regardless of any approvals made by Licenser.
- 8.c) All technical questions related to proposed modifications of the Products shall be directed to the Licenser's Chief Mechanical Engineer with a copy provided to the Licenser contact identified in Clause 23 – Notices.
- 8.d) Any modification by Licensee shall be deemed an Improvement under this Agreement.



CLAUSE 9
Workmanship

- 9.a) Licensee will at all times use its best efforts to attain high class workmanship in all activities performed by Licensee or its subcontractors relating to Products, so as to protect the reputation of Licenser and the good will of the Mark (as hereinafter defined) regarding such Products.
- 9.b) Licensee shall maintain Licenser's standards of materials and workmanship and shall conform, insofar as possible, to Licenser's engineering standards in manufacture of Products, and will regularly consult with Licenser in matters of application or problems relating to the design, manufacture, quotation, sale, installation and operation of Products, and will abide by the recommendations and instructions received from Licenser. The responsibility for the exercise of final judgment in making recommendations to Licensee's customers for proper application of Products shall, however, rest solely with Licensee.
- 9.c) Licenser shall have the right, upon reasonable notice to Licensee, to conduct inspections of Licensee's manufacturing facilities and procedures during normal business hours and to inspect randomly-selected Products, manufacturing equipment and processes for Products, and installations of Products. Deficiencies in Products, to the extent these are the result of Licensee's manufacture, use, modification or installation of Products, shall be remedied by Licensee within 30 days of written notice from Licenser of the deficiencies.

CLAUSE 10
Warranty & Representations

- 10.a) Licenser will provide to Licensee Technical Information available to Licenser. Licenser represents that such Technical Information provided by Licenser is accurate and complete.
- 10.b) OTHER THAN AS SET FORTH HEREIN, LICENSOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AND ASSUMES NO RESPONSIBILITIES WHATEVER WITH RESPECT TO THE MANUFACTURE, USE, SALE, OR OTHER DISPOSITION BY LICENSEE OF PRODUCTS.

CLAUSE 11
Indemnity/Insurance/Limitation of Liability

- 11.a) **Indemnity.** Licensee and Licenser will indemnify and hold harmless each other from, for, and against all liabilities asserted against, resulting to, imposed on, or



incurred by either Party at any time arising out of claims or allegations that injury to either Party or any third party resulted from the manufacture, marketing, sale, installation, and operation of Products and any Improvements thereto pursuant to this Agreement. If it should be shown that the cause of any liability for any injury resulting from the manufacture, marketing, sale, and installation of Products, then Lessor will use its best efforts to correct any errors or deficiencies in the Technical Information and will contribute to satisfying any liability arising from such defect in the Technical Information in an amount up to but not exceeding the limit set forth in Clause 11 (b) herein. As used in this Agreement, "Indemnify" means to indemnify, reimburse, defend and hold harmless the indemnitee (including its parents, subsidiaries, successors, affiliates, officers, directors, employees, agents, and representatives) from any and all liabilities and injuries; "liabilities" means all demands, claims, actions, causes of action, assessments, losses, damages, obligations, judgments, fines, and costs and expenses (including without limitation settlements, penalties, interest, reasonable attorneys fees, disbursements and expenses, and reasonable consultant fees, disbursements and expenses); and "injury" means bodily injury, death, property damage or economic loss.

- 11.b) **Limitation of Liability.** Lessor's responsibility for any liabilities for any injury to Licensee or any third party arising from the design, manufacture, marketing, sale, and installation of any Product pursuant to this Agreement shall be limited to the amount of the relevant Royalty for the particular Product, as provided in Clause 6(c). In no event shall Lessor's liability exceed the amount of such royalty for the particular Product. Licensee understands and agrees, however, that in no event shall it be entitled to any indemnity from Lessor with respect to liabilities for injuries arising from the operation by purchasers of installed Products, inasmuch as Lessor and its agents will not be permitted or authorized to operate, service, or repair Products manufactured and sold by Licensee pursuant to this Agreement.

- 11.c) **Insurance.** Licensee, pursuant to this Agreement, will carry general public liability insurance to include products and completed operations coverage on a claims-made or occurrence basis. This insurance coverage shall be in an amount not less than Two Million U.S. Dollars. Each such insurance policy will name Lessor as additional insured by no later than the date of the first Licensee purchase order. Licensee will furnish a certificate of insurance, or a copy of the policy upon request, evidencing such coverage within thirty (30) days of the Licensee's first purchase order and annually thereafter.

- 11.d) Licensee may satisfy the requirement in the above paragraph by adding Lessor to its Builders All-Risk insurance policy as an additional insured "for the interests as specified" if such insurance policy meets the identified insurance limits specified above.



- 11.e) Licensee may be allowed to self-insure for the required insurance coverage, provided Licensee demonstrates to the satisfaction of Lessor sufficient financial capability to self-insure.

CLAUSE 12

Patents

- 12.a) To the best of Lessor's knowledge, it has not infringed any patent possessed by any third party. Accordingly, Lessor makes no warranty or representation, and none implied, that the manufacture, use or sale of Products, by Licensee under this Agreement will be free from infringement of any third party patents.
- 12.b) In the event of any legal action for patent infringement by or against Licensee based on the manufacture, use or sale of any Products under this Agreement, Lessor shall, upon request of Licensee, furnish Licensee any information and evidence which is readily available to Lessor and which Lessor deems material to the prosecution or defense of such patent actions.
- 12.c) If Licensee desires that a patent be obtained in the Territory for an invention made by Lessor during the term of this Agreement, then Lessor will cooperate with Licensee in obtaining such patent on behalf of Lessor if Lessor desires the patent and if the invention is patentable under applicable patent laws. The payment of all fees incurred in investigating or obtaining such patents shall be equally shared by Lessor and Licensee; provided however, that any such patent obtained by Licensee for Lessor will be subject to this Agreement.
- 12.d) In case a patent of Lessor which is covered by this Agreement shall have lost its importance to Lessor in the Territory, Lessor will consult with its other Licensees not later than 6 months before the date upon which any patent fees or other required patent maintenance action shall fall due. If all other Licensees agree, Lessor will cease to maintain such patent, whereby Licensee will cease to maintain such patent, whereby Licensee may maintain such patents for its own account in Lessor's name.
- 12.e) Licensee will use due diligence to police and enforce any patents obtained by Lessor in the Territory, and will notify Lessor when third parties commit such acts as may infringe such patents. It will be left to Lessor to decide whether or not such infringements are to be prosecuted and the Parties will mutually agree how to share in the costs of prosecution.



CLAUSE 13
Improvements

- 13.a) In order to further the mutual interest of both parties, Lessor shall disclose and make available to Licensee and Licensee shall disclose and make available to Lessor, free of any charge, all Improvements developed while this Agreement is in effect. Such disclosure shall be made not earlier than six (6) months after such Improvement have been introduced into commercial production, whether or not such Improvements are patented or subject to patent applications; provided, however, that an Improvements, including new designs and inventions, which are developed by any of Lessor's other Licensees shall not be made available to Licensee and, similarly, any such improvements and developments made by Licensee shall not be made available to any other Licensee of Lessor. However, best efforts will be made to make all improvements available to Licensee unless this is prevented by other license agreement (s) and related legal regulation.
- 13.b) Improvements disclosed by either party pursuant to this paragraph shall be subject to the secrecy provisions of Clause 5 herein.
- 13.c) Any Improvement shall be owned by the party, which has discovered or made the Improvement. Lessor shall grant to Licensee a royalty-free license to use Improvements developed by Lessor and disclosed pursuant to Clause 13(a) above. Any Improvement licensed from Licensee to Lessor, however, shall be non-exclusive as to Lessor's use or modification of such Improvement, subject only to rights retained by Licensee.

CLAUSE 14
Copyrights

- 14.a) Licensee understands and agrees that certain items to be provided within the Technical Information, including but not limited to software, drawings, manuals, and promotional and sales materials, are protected under U.S. Copyright law whether or not such items bear copyright notice. Licensee further agrees that Lessor owns all right, title, and interest to any copyrightable materials contained in the Technical Information. Nothing in this Agreement shall constitute or be deemed to be a transfer to Licensee of any ownership rights in any such copyrightable material, and title to all copyrights shall remain exclusively with Lessor. Pursuant to the license granted in Clause 2 of this Agreement, however Licensee shall have the limited right to use internally and copy any program in conjunction with a machine or for archival or backup purposes. Any archival copies made under this paragraph shall be destroyed upon termination of this Agreement for any reason. Licensee may maintain archival copies as required by national or local laws, regulations, and codes.



- 14.b.) Except as provided above in Clauses 3 (a), 3(d), 3(e) and 14 (a), Licensee may not copy, reproduce, distribute (including sale, lease, or rental), perform, display, or prepare derivative works based upon any copyrightable materials provided to Licensee by Licenser without prior written consent of Licenser.

CLAUSE 15

Trademarks

- 15.a) **Grant of License.** For the duration of this Agreement, Licensee shall be permitted to use the Mark royalty-free on the Products manufactured by Licensee. The Mark shall be affixed to a plate appearing on each Product supplied by Licensee upon which there shall be an indication that the Products were supplied by Licensee under license from Licenser. For the duration of this Agreement, Licensee also shall be permitted to use the Mark in marketing, advertising, and sales activities related to the Product manufactured by Licensee.
- 15.b) **Use of Trademarks.**
Licensee agrees to use the Mark only in the form approved by Licenser. The design, appearance, placement, application of statutory notice and other uses by Licensee of the mark shall conform to the existing usage and specifications to be provided to Licensee by Licenser. Upon request by Licenser, Licensee shall promptly provide representative samples of any and all uses by Licensee of the Mark.
- (i) Licensee acknowledges that the Mark, the property solely of Licenser, is of great commercial value to Licenser, and represents the good will and wide recognition attained by Licenser's high quality Products. All use of the Mark by Licensee, including any good will arising out of such use, shall be solely to the benefit of Licenser. Licensee further acknowledges that any misuse or infringement of the Mark, including breach of Licensee's obligations under Clauses 8 and 9 of this Agreement would cause Licenser irreparable harm for which it would have no adequate remedy at law.
- (ii) All rights to the use of the Mark by Licensee shall terminate immediately with the termination of this Agreement. Licensee understands and agrees that it will use no mark confusingly similar to the Mark in any way following the termination of this Agreement. Licensee's obligations under this paragraph shall survive any termination of this Agreement.
- 15.c) **Registered User Status.** This license to use the Mark on Products and in marketing and sales activities shall be conditioned, where required by applicable law or custom, upon the entry of Licensee into a Registered User Agreement in a form appropriate under the applicable law within the Territory. The use of the



Mark pursuant to this license shall in no way imply that Licensee is acting as an agent for Lessor or vice versa.

CLAUSE 16
Duration of Agreement

- 16.a) This Agreement will be in effect for the term of three (3) years from the Effective Date hereof, unless terminated earlier under the terms provided for herein.
- 16.b) After the expiration of the initial three (3) year term, this Agreement will be continued from year to year, in accordance with the terms and conditions of this Agreement unless notice is given in writing by one party to the other at least sixty (60) days before the expiration of the original or extended period that the notifying party does not intend to renew or extend this Agreement.
- 16.c) In the event Licensee has not received during the first two (2) years a minimum of 5 orders for the Products, Lessor has the right to terminate the Agreement.
- 16.d) Any orders resulting from bids submitted by the Parties through a consortium or joint venture or equivalent cooperation agreement will be part of the orders received in the time period as per above Clause 16.c.

CLAUSE 17
Obligations After Termination of Agreement

- 17.a) After any termination of this Agreement by Lessor in accordance with the provisions of Clause 16 (c) hereof, Licensee shall no longer have the right to manufacture the Products, to use the Technical Information supplied to Licensee by Lessor under this Agreement (to the extent that said Technical Information has not meanwhile become publicly known through no fault of Licensee), or to use the Mark. Licensee shall return to Lessor all of the design, drawings, and other physical materials comprising the Technical Information within thirty (30) days after such termination.
- 17.b) Any notice of termination, or any termination, of this will not prevent Licensee from completing manufacture and delivering Products which were ordered before the date said notice or to confirm the validity of bids submitted to Clients before the notice of Termination, if so agreed in writing with Lessor in order to prevent any damage to Lessor's Trademark and Lessor's/Licensee's reputation in the Territory; provided, however, that Licensee will have the duty to make the Royalty payment required under Clause 6 of this Agreement, provided further, that Licensee will have the duty to maintain the secrecy of all Technical Information as herein above provided in Clause 5. If the Agreement termination



is for a reason other than breach, Lessor shall provide reasonable support to Licensee required in execution of this work.

CLAUSE 18
Assignment

The rights and obligations arising out of this Agreement shall not be assignable by Licensee without the written consent of Lessor.

CLAUSE 19
Arbitration

In the event of any dispute, controversy or claim between the parties arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, the parties shall attempt in the first instance to resolve such dispute through friendly consultations between the parties. If such consultations do not result in a resolution of the dispute within thirty (30) days, then the dispute may be referred to the President of each Company and the two of them shall personally confer in an effort to resolve the matter. If the presidents can not resolve the matter, then the dispute may be submitted by either party to binding Arbitration, irrespective of the magnitude thereof, the amount in dispute or whether such dispute would otherwise be considered justifiable for resolution by any court, by giving written notice thereof to the other party. The parties agree to attempt to resolve all dispute arising hereunder promptly equitably and in a good faith manner.

Arbitration shall be conducted in accordance with the American Arbitration Association and interpreted under the laws of the State of Pennsylvania. The place of Arbitration shall be Erie, PA.

CLAUSE 20
Law Applicable

This Agreement shall be deemed to have been made in the Commonwealth of Pennsylvania, United States of America, and the parties intend to be governed in the operation, effect, validity, interpretation, performance and discharge of this Agreement by the laws of the Commonwealth of Pennsylvania.

CLAUSE 21
Modification

This Agreement shall not be modified except by a supplemental written agreement executed by an authorized representative of both of the parties hereto.



CLAUSE 22

Force Majeure

- 22.a) In the event that either party gives notice that it is delayed in the performance of its obligations under this Agreement by Force Majeure, this Agreement shall be suspended until such party gives notice that the cause of such delay has ceased, and neither Licensor nor Licensee shall have any liability for loss or injury suffered by the other party by reason of said Force Majeure. Upon cessation of the cause of said delay, this Agreement shall become fully operative under the terms hereinabove set forth.
- 22.b) For the purpose of this Agreement, Force Majeure shall include, without limitation, strikes, lockouts, riots, sabotage, acts of war, civil disorder or piracy, retroactive application of laws and regulations in any country covered by this Agreement, destruction of essential equipment by fire, explosion, storm, flood, earthquake and the like, and delay caused by failure of power supplies to either Licensor's or Licensee's facilities and delay caused by transportation facilities and any similar cause of delay beyond the reasonable control of the party liable to perform.

CLAUSE 23

Notices

- 23.a) Any notices, reports, or information required to be given under the terms of this Agreement, by Licensee to Licensor shall, unless otherwise expressly provided for, be addressed to:

Mark J. White
Erie Power Technologies, Inc.
5300 Knowledge Pkwy., Suite 200
Erie, PA 16510
Fax: 814/897-1092

- 23.b) Any notices, reports or information required under the terms of this Agreement to be given by Licensor to Licensee shall, unless otherwise expressly provide for, be addressed to:

John C. Viskup, Jr.
Victory Energy Operations, LLC
302 East 5th Avenue – Unit “D”
Owasso, OK 74055
Fax: 918-274-0059



Notice shall be deemed to have been given as of the date postmarked, when in writing and mailed, registered mail herein above specified, but such method of giving notice shall not exclude the use of any other method of giving notice, which does in fact give notice.

CLAUSE 24

Integration, Merger and Waiver

- 24.a) The terms and provisions contained in this Agreement, are the full Agreement of the parties pertaining to the subject matter of this Agreement, and are fully set forth herein, and no prior understanding or obligation not expressly set forth herein shall be binding upon the parties to this Agreement, and no subsequent modification of this Agreement shall be binding upon the parties unless negotiated upon the terms herein provided and executed with the same formalities as this Agreement.
- 24.b) No waiver, expressed or implied, by either party of any breach of obligation by the other party shall operate or be considered as a waiver of any other or subsequent breach.
- 24.c) Section headings appearing in this Agreement are inserted for convenience of reference only and shall in no way be construed to be interpretation of the text.

CLAUSE 25

No Agency

Nothing in this Agreement shall be construed to establish by expression or implication that either party to this Agreement is acting as, or is deemed to be, the agent for the other party.

CLAUSE 26

Severability

In the event that any provision of this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, as a whole or in part, by a court or administrative body of competent jurisdiction, then unless otherwise agreed, this Agreement shall continue in full force and effect except for such provision, which shall be deemed to be excised here from but only with regard to the part held invalid, illegal, or unenforceable. In such event, the parties hereby agree to use their best efforts to agree on substitute provision, which while valid, will achieve as closely as possible the same economic effects as invalid provision(s).



CLAUSE 27
Further Assurances

Each Party hereto covenants, without the need for additional consideration, that it and its affiliates will take such further actions and execute any further documents as may be reasonably required to fully effectuate the terms, ownership and licenses, conditions and intent hereunder.

CLAUSE 28
Counterparts

This Agreement may be executed in two or more counterparts, each of which will be considered an original, and all of which together will constitute one and the same instrument.

IN TESTIMONY WHEREOF, witness the signatures of the parties hereto:

ERIE POWER TECHNOLOGIES, INC.

By: Wendy Melt

Title: Director, Sales and Marketing

Date: 1/09/03

Witnessed By: Jerri L Jackson

VICTORY ENERGY OPERATIONS, LLC

By: John C. Jeff

Title: PRESIDENT

Date: 01/09/03

Witnessed By: Shawn E. B.

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF PENNSYLVANIA
3
4 INDECK KEYSTONE ENERGY LLC)
5 Plaintiff,)
6 vs.) Civil No. 04-325 Erie
7 VICTORY ENERGY OPERATIONS)
8 LLC,)
9 Defendant.)

14 CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER
15 DEPOSITION OF ALAN W. CHRISTIAN

17 Taken on Monday, December 5, 2005
18 at 10:08 a.m.
19 At Hall Prangle & Schoonveld, LLC
300 South Fourth Street, Suite 1001
19 Las Vegas, Nevada

25 Reported by: MICHELLE C. JOHNSON

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1 PROCEEDINGS 10:08 A.M.
2 THE VIDEOGRAPHER: We are now on the record.
3 Today is Monday, December 5th, 2005, and the time is
4 approximately 10:08 a.m.
5 This begins Tape No. 1 in the videotaped
6 deposition of Alan Christian. We're at the Law
7 Offices of Hall Prangle & Schoonveld, LLC, 300 South
8 Fourth Street, Las Vegas, Nevada.
9 This deposition has been ordered by
10 Christopher Sheean, representing the defendant. We
11 are here in the matter of "Indeck Keystone Energy,
12 LLC, Plaintiff, versus Victory Energy Operations,
13 Defendant." This case is in the United States
14 District Court, Western District of Pennsylvania.
15 Civil Action No. 04-325 Erie.
16 My name is Tim Hartmanszerbiec, Court Video
17 Specialist, for Certified Legal Videography, Las
18 Vegas, Nevada. The court reporter is Michelle
19 Johnson, for Cameo Kayser & Associates.
20 Will counsel please identify yourselves and
21 whom you represent for the record, starting with the
22 plaintiff's counsel.
23 MR. WILLIAMS: My name is Robert Williams. I
24 represent the plaintiff, Indeck Keystone Energy, LLC.
25 MR. SHEEAN: My name is Christopher Sheean.

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1 I'm with Wildman, Harrold, Allen & Dixon in Chicago.
2 And I represent the defendant, Victory Energy
3 Operations, LLC.
4 THE VIDEOGRAPHER: The reporter will
5 administer the oath.
6 Whereupon --
7 ALAN W. CHRISTIAN,
8 being first duly sworn to tell the truth, the whole
9 truth, and nothing but the truth, was examined and
10 testified as follows:
11 EXAMINATION
12 BY MR. SHEEAN:
13 Q. Sir, would you please state your full name
14 for the record.
15 A. Alan Wayne Christian.
16 Q. Mr. Christian, where do you reside?
17 A. In Danville, California.
18 Q. Can you please give your current address.
19 A. 593 Old Orchard Drive, Danville, California,
20 94526.
21 Q. Let the record reflect that this is the
22 deposition of Alan Wayne Christian taken pursuant to
23 subpoena and notice, pursuant to the Federal Rules of
24 Civil Procedure and all applicable local rules.
25 Mr. Christian, have you ever had your

<p style="text-align: right;">Page 38</p> <p>1 Energy? 2 A. Because Indeck Keystone considered it -- in 3 my opinion, Indeck Keystone considered it a conflict 4 to represent both Victory and Indeck Keystone. 5 Q. Whom from -- strike that. 6 Did anyone from Indeck Keystone Energy tell 7 you that it was a conflict of interest for Christian 8 Power to represent both Victory Energy and Indeck 9 Keystone Energy? 10 A. Yes. 11 Q. Who? 12 A. Chris Petcos. 13 Q. Anyone else? 14 A. Well, I'm pretty sure just about anybody at 15 Indeck Keystone would have said that. 16 Q. I don't want you to guess or speculate; I 17 just want you to tell me what you recall. Do you 18 recall any conversations with anyone, other than Chris 19 Petcos, at Indeck Keystone Energy wherein they stated 20 that it would be a conflict of interest for Christian 21 Power to continue to represent Victory Energy and 22 Indeck Keystone Energy? 23 A. Well, Chris was my primary contact, so he was 24 the one carrying the message, I think. 25 Q. Did anyone within Indeck, but outside of</p>	<p style="text-align: right;">Page 40</p> <p>1 recall with anyone relating to whether or not 2 Christian Power would be allowed to continue to 3 represent both Indeck Keystone Energy and Victory 4 Energy? 5 A. I don't think that position was clearly 6 stated until probably November of '04. And I don't 7 think it was a firm statement even then. But by 8 December of '04, it was. 9 MR. SHEEAN: Okay, I don't want to get cut 10 off, so let's take our break now. 11 THE VIDEOGRAPHER: This is the end of Tape 12 No. 1. We're off the record at 11:05 a.m. 13 (Recess taken.) 14 THE VIDEOGRAPHER: This is the beginning of 15 Tape No. 2. We're on the record at 11:12 a.m. 16 You may proceed. 17 BY MR. SHEEAN: 18 Q. Mr. Christian, before we went off the record, 19 you had mentioned a couple of conversations in the 20 fall of 2004. I believe you testified that in 21 November of 2004, the prospect that it would be a 22 conflict of interest to represent both Victory Energy 23 and Indeck Keystone Energy was first raised, but it 24 wasn't set as a definitive position; is that correct? 25 A. That's correct.</p>
<p style="text-align: right;">Page 39</p> <p>1 Indeck Keystone Energy, ever discuss with you the 2 belief that it was a conflict of interest for 3 Christian Power to continue to represent both Victory 4 Energy and Indeck Keystone Energy? 5 A. Well, there were meetings, even at PowerGen, 6 where I'd say a number of Indeck individuals were 7 present when the topic was being discussed. 8 Q. Well, I want to go through -- 9 THE VIDEOGRAPHER: Four minutes. 10 MR. SHEEAN: We'll start this process. 11 Q. I want to go through with you the 12 conversations you had leading up to that decision. 13 You told about the first conversation you had with 14 Mr. Petcos over the phone wherein he said you could 15 continue to represent the aftermarket parts, correct? 16 A. Yes, uh-huh. 17 Q. When was the next time you had any 18 conversation with anyone associated with Indeck 19 relating to your continuation of -- as a 20 representative for Victory Energy? 21 A. Well, those conversations went on, I'd say, 22 pretty regularly through the fall and winter of '04, 23 even into early '05. 24 Q. To the best of your recollection, when was 25 the next specific meeting or conversation that you can</p>	<p style="text-align: right;">Page 41</p> <p>1 Q. And then in December of 2004, it was stated 2 as an affirmative position by Indeck Keystone Energy, 3 correct? 4 A. As I recall, I think the first -- we'll call 5 it absolute statement -- happened at PowerGen in a 6 meeting there. 7 Q. The meeting in November of 2004, was that 8 another telephone conference with Chris Petcos? 9 A. Yes, uh-huh. 10 Q. Anyone else on the line in that conversation? 11 A. I don't recall ever having a conference call 12 when there was more than just myself and one other 13 person. 14 Q. And then in December, the meeting that you 15 referenced at PowerGen, that was in person, correct? 16 A. That's correct. 17 Q. And that was in Orlando? 18 A. Yes. 19 Q. Do you recall where the conversation -- 20 strike that. 21 You said there were a series of conversations 22 at PowerGen. Is that right? 23 A. Yes, that's correct. 24 Q. Do you recall where the first conversation 25 took place?</p>

<p>1 A. Probably just in the booth, the Indeck 2 Keystone booth.</p> <p>3 Q. And who was present?</p> <p>4 A. A number of Indeck Keystone employees. The 5 person I was primarily talking with would have been 6 Chris Petcos.</p> <p>7 Q. Do you recall the names of any of the other 8 individuals who were there?</p> <p>9 A. No, I don't. I know Jeff was probably there. 10 But other than -- the individuals they brought to the 11 show were all standing in the booth.</p> <p>12 Q. When you say "Jeff," are you referring to 13 Jeff Coale?</p> <p>14 A. Yes.</p> <p>15 Q. Do you know who Jeff Coale works for?</p> <p>16 A. I believe he works for Marsha Forsythe.</p> <p>17 Q. And the company that he works for?</p> <p>18 A. Indeck, I think.</p> <p>19 Q. Anyone other than Mr. Petcos and Mr. Coale 20 that you can recall who were present during this first 21 conversation?</p> <p>22 A. I can't recall who was there.</p> <p>23 Q. Who primarily did the talking on behalf of 24 Indeck at that time?</p> <p>25 A. Um, well, since I knew Chris the best and the</p>	<p>Page 42</p> <p>1 A. Um, I believe there is a restriction on what 2 they can offer, yes.</p> <p>3 Q. What is your understanding of the restriction 4 on what they can offer?</p> <p>5 A. I believe that, for package boilers, it has 6 to do -- boilers have to be over 150,000 pounds an 7 hour.</p> <p>8 Q. What is the basis for your understanding that 9 the boilers have to be over 150,000 pounds per hour?</p> <p>10 A. Well, I believe that's what they've told us. 11 And I am not sure if the contract states that or not, 12 but that's what I've been told.</p> <p>13 Q. Did you have an understanding of the range of 14 products that Victory Energy was licensed to sell 15 Keystone boilers for as a licensee for Erie Power?</p> <p>16 A. I am not aware that it's a license from Erie 17 Power that Indeck Keystone has.</p> <p>18 Q. I asked a bad question. Let me clean it up 19 for you, okay?</p> <p>20 A. Okay.</p> <p>21 Q. Did you ever have an understanding of whether 22 or not there was a limitation on the size capacity 23 range for the boilers that Victory Energy was 24 authorized to manufacture and sell from either Erie 25 Power or Indeck Keystone Energy?</p>
<p>1 longest, he is the one I preferred to hear from, 2 honestly. And Chris was -- for me, at least, Chris 3 was my primary contact.</p> <p>4 Q. To the best of your recollection, what did 5 Mr. Petcos say relative to your continuing to 6 represent both Victory Energy and Indeck Keystone 7 Energy?</p> <p>8 A. My primary interest was to investigate the 9 possibility of representing Indeck Keystone for 10 aftermarket parts sales and to continue with Victory. 11 Chris's response ultimately became, "You can't do 12 that."</p> <p>13 Q. Did he say why?</p> <p>14 A. Well, they wanted -- Indeck Keystone wanted 15 representation that would -- individuals and companies 16 that would represent all of their products, not just a 17 portion of the product line.</p> <p>18 Q. To the best of your knowledge, does Indeck 19 Keystone Energy currently offer any water-tube package 20 boilers for sale?</p> <p>21 A. Yes, they do.</p> <p>22 Q. Is there any limitation, to the best of your 23 knowledge, on the size capacity for the water-tube 24 package boiler that Indeck Keystone Energy is offering 25 for sale currently?</p>	<p>Page 43</p> <p>1 A. Yes, I think there is a specific range in 2 size and description of those boilers.</p> <p>3 Q. Do you know the upper limit of that size 4 capacity?</p> <p>5 A. Well, I think it's, for Victory, for their 6 license, is 150,000 pounds an hour nominally.</p> <p>7 Q. So to the best of your understanding, would 8 it have been a conflict of interest for Christian 9 Power to continue to represent Victory Energy for 10 boilers below 150,000 pounds per hour of steam and 11 Indeck Keystone Energy for boilers above 150,000 12 pounds of power of steam?</p> <p>13 MR. WILLIAMS: Objection to the form.</p> <p>14 BY MR. SHEEAN:</p> <p>15 Q. You can answer.</p> <p>16 A. Well, my opinion usually doesn't count for 17 much when manufacturers' principals are making 18 decisions. I think it probably would be possible to 19 do that.</p> <p>20 Q. Did you make that proposal to anyone at 21 Indeck Keystone Energy during your discussions 22 relative to continuing on as a rep for Victory Energy?</p> <p>23 A. No, I did not make that proposal.</p> <p>24 Q. Any reason why you didn't make that proposal?</p> <p>25 A. For me, I didn't think that would be where</p>

<p style="text-align: right;">Page 46</p> <p>1 the cleanest split of product lines would lie. My 2 feeling was that the cleanest split would be for me to 3 represent the aftermarket existing boiler servicing 4 for Indeck Keystone, balance of boilers for Victory. 5 Q. Did anyone at Victory Energy ever tell you if 6 they would consider it to be a conflict of interest 7 for you to represent Indeck Keystone Energy on the 8 aftermarket parts and continue to represent Victory 9 for the boilers? 10 A. To the best of my knowledge, nobody ever said 11 that. 12 Q. What was your reaction when Mr. Petcos told 13 you at PowerGen that it would not be possible for you 14 to continue representing both Indeck Keystone Energy 15 and Victory Energy? 16 A. It was a personal reaction. I was 17 disappointed because it -- it -- it was going to 18 result in me making a pretty tough decision that would 19 affect, possibly affect, the balance of my product 20 lines. 21 Q. Did you convey to Chris Petcos or anyone at 22 Indeck that you considered this to be a tough 23 decision? 24 A. Yes, I did. 25 Q. Do you recall any response to your voicing</p>	<p style="text-align: right;">Page 48</p> <p>1 A. What do you mean, "preset"? 2 Q. When did you first learn that there would be 3 a meeting with Chris Petcos and Jeff Coale off the 4 display floor with a group of representatives? 5 A. Oh, it was during the show. It had not been 6 arranged for prior to that. 7 Q. How many other reps were in this meeting? 8 A. There were either three or four, including 9 myself. 10 Q. Do you recall the names of any of those 11 individuals? 12 A. Tom Patten, Gene Lockaby, Chuck Thacher. And 13 I'm not sure who the other person was. It could have 14 been Tommy Bronson, but I don't remember. I -- I 15 don't remember. 16 Q. Do you know whether or not any of the other 17 four individuals that you believe may have been at 18 this meeting were at that time Victory Energy 19 representatives? 20 A. To the best of my knowledge, I think they all 21 were Victory representatives. 22 Q. And who primarily did the talking at this 23 meeting? Was it Mr. Petcos? 24 A. I'd say it was about 50/50 between Chris and 25 Jeff. I wouldn't say that one or the other conducted</p>
<p style="text-align: right;">Page 47</p> <p>1 that -- strike that. 2 Did anyone from Indeck Keystone Energy 3 respond when you told them this was a tough decision? 4 A. Yeah, they acknowledged it. They knew that 5 some reps would have a difficult time making a 6 decision. 7 Q. How did you leave it with Mr. Petcos and 8 Mr. Coale in this first meeting on the floor of the 9 PowerGen conference in Orlando in 2005 -- in 2004? 10 A. Well, it was an exchange of views, but not a 11 decision, a meeting where any decisions were going to 12 be made. I don't think at that point they were asking 13 for a deadline for a decision. I don't recall that. 14 Q. When was the next -- strike that. 15 You said there were a series of conversations 16 at PowerGen. When was the next conversation at 17 PowerGen relative to whether or not you could continue 18 as a representative for both Victory Energy and Indeck 19 Keystone Energy? 20 A. Well, I went by the booth a number of times, 21 but not for a meeting, just to say hello. But before 22 the PowerGen was over, we did have a group of reps 23 meet with Chris and Jeff off of the floor in a private 24 room. Off of the display floor, not in a booth. 25 Q. Was this a preset meeting?</p>	<p style="text-align: right;">Page 49</p> <p>1 the meeting. 2 Q. How long did the meeting last? 3 A. Probably an hour. 4 Q. To the best of your recollection, what did 5 Chris Petcos and Jeff Coale say, and what did the 6 other representatives say who were there, including 7 yourself? 8 A. Well, I think that was the first point in 9 time where it was obvious that there wasn't going to 10 be any negotiation with Indeck. We had to decide; we 11 weren't going to be able to carve up portions of the 12 lines from two different companies. It was pretty 13 clearly stated that we had to make a decision. 14 Q. What did the reps say, to the best of your 15 knowledge, if you recall? 16 A. Well, I guess one of the things that we 17 needed to understand was what Indeck Keystone was 18 going to be as a company, what products they were 19 going to pursue, and just who they were going to be. 20 And it's my opinion that nobody really knew at that 21 point. I think Indeck Keystone was still trying to 22 decide what they were going to do, but that's just my 23 opinion; that wasn't stated. 24 Q. Anything else that you can recall from that 25 meeting?</p>

<p style="text-align: right;">Page 50</p> <p>1 A. Um, well, we did talk about details in the 2 proposed Representative Agreement. So there were some 3 discussions on the language in the proposed contract.</p> <p>4 Q. What discussions relative to the language in 5 the proposed contract do you recall?</p> <p>6 A. Um, I don't recall all of the issues, but 7 some pertain to what the commission schedule was going 8 to be, what the treatment of commissions on rental 9 boilers was going to be, and indemnification.</p> <p>10 Q. Why was indemnification discussed, if you 11 know?</p> <p>12 A. Well, it's a -- it's an important point for 13 me, but for most reps. It's frequently a discussion, 14 a topic of discussion. It's frequently excluded, if 15 possible, by manufacturers, and included, if possible, 16 by reps. So it's not unusual that that be discussed.</p> <p>17 Q. Did you have any concerns, going into the 18 meeting, regarding what you perceived Indeck's 19 position would be regarding the commission schedule?</p> <p>20 A. Um, yes, I had a concern with the level of 21 commissions and the method for crediting effort, and 22 whether a portion of the commission could be 23 attributed to the home office for their perceived 24 contribution to the sales task.</p> <p>25 Q. To the best of your knowledge at the time</p>	<p style="text-align: right;">Page 52</p> <p>1 not Christian Power Equipment would be allowed to 2 continue as a representative for both Indeck Keystone 3 Energy and Victory Energy?</p> <p>4 A. These are meetings between myself and an 5 Indeck person, is that what you're saying?</p> <p>6 Q. Well, let's -- no, I'm not limiting it in 7 that way. Any other meetings whatsoever.</p> <p>8 A. Well, the reps talked among themselves. But 9 there were no meetings.</p> <p>10 Q. What other reps did you talk to about that?</p> <p>11 A. Um, I don't remember specifically all of the 12 reps, but many of them go back at least 20 years, and 13 so I've known quite a number. We were all uncertain 14 where these companies were going, and so we were all 15 talking about it. But we didn't have any specific 16 meetings about it.</p> <p>17 Q. Anything else that you can recall regarding 18 your discussions with other representatives relative 19 to this topic?</p> <p>20 A. No, I wouldn't say so.</p> <p>21 Q. To the best of your knowledge, did all four 22 of the reps besides yourself who were at the meeting 23 with Mr. Coale and Mr. Petcos at PowerGen in 2004 24 terminate their rep agreement with Victory Energy and 25 go over to Indeck Keystone Energy?</p>
<p style="text-align: right;">Page 51</p> <p>1 that you went into this meeting with Mr. Coale and 2 Mr. Petcos, did Indeck have any type of a reputation 3 in the industry relative to its treatment of 4 representatives on commissions?</p> <p>5 A. I don't know if I -- yeah, I think they 6 did -- did have a reputation.</p> <p>7 Q. What was that reputation, to the best of your 8 knowledge?</p> <p>9 A. I think, right or wrong, reps had the 10 perception that -- that you had to fight for any 11 commission on a sale. And you needed to be pretty 12 cautious about dealing with Indeck. And I'm not 13 saying that pertained to Indeck of today, but 14 certainly was a reputation from the past.</p> <p>15 Q. Was Marsha Forsythe at PowerGen in '04?</p> <p>16 A. I don't recall seeing her. I don't know if 17 she was there.</p> <p>18 Q. You certainly didn't meet with her?</p> <p>19 A. I didn't meet with her.</p> <p>20 Q. Other than the conversation you had the first 21 time you stopped by the booth, with Chris Petcos and 22 Jeff Coale, and this subsequent one-hour meeting 23 between Mr. Petcos, Mr. Coale, yourself, and three 24 other reps, do you recall any other specific meetings 25 during the PowerGen conference relative to whether or</p>	<p style="text-align: right;">Page 53</p> <p>1 MR. WILLIAMS: Objection to form, basis. 2 THE WITNESS: You know what, I don't know 3 what all of the reps have done. I know at least one 4 did not go back to Indeck Keystone.</p> <p>5 BY MR. SHEEAN:</p> <p>6 Q. Which one was that?</p> <p>7 A. Tom Patten.</p> <p>8 Q. Do you know if he's still a Victory Energy 9 rep?</p> <p>10 A. To my knowledge, he is.</p> <p>11 Q. How about Gene Lockaby?</p> <p>12 A. I don't know.</p> <p>13 Q. How about Chuck Thacher?</p> <p>14 A. I don't know what any of them did.</p> <p>15 Q. Okay.</p> <p>16 A. I should, but I don't know.</p> <p>17 Q. When was the next time after the PowerGen 18 conference in December 2005 (sic) that you had any 19 conversation with anyone at Indeck relative to your 20 ability to continue on as a rep for Victory Energy?</p> <p>21 A. I don't recall specific conversations during 22 the balance of December.</p> <p>23 Q. When was the next date that you do recall?</p> <p>24 A. I don't recall a specific date, but there 25 were conversations in January. I think there might</p>

<p style="text-align: right;">Page 54</p> <p>1 have been a revision of the proposed contract that was 2 sent out in -- sometime in the early part of '05. 3 Q. Had you already seen a version of the 4 proposed Representative Agreement prior to this first 5 one going out in early 2005? 6 A. Yes, I had. 7 Q. When did you see that first version? 8 A. You know, I don't remember. I believe that I 9 had it -- I may have had it -- before PowerGen. I 10 don't remember for sure. 11 Q. Did the revisions in the proposed rep 12 agreement that you received from Indeck Keystone take 13 into account any of the concerns that were raised by 14 you or any of the other reps during that meeting at 15 PowerGen? 16 A. Yes, it did. There were modifications. 17 Q. Other than receiving this revised proposed 18 Representative Agreement from Indeck Keystone Energy, 19 when was the next conversation or communication of any 20 kind that you had with anyone at Indeck Keystone 21 Energy regarding your ability to continue as a rep for 22 Victory Energy? 23 A. I don't recall a specific phone call. I know 24 specifically it was a phone call, but I don't remember 25 when that was. I'm going to say in January.</p>	<p style="text-align: right;">Page 56</p> <p>1 specific call. But in late January, I notified, I 2 think both Chris and Jeff, that I was going to cancel 3 my representation with Victory and sign the Indeck 4 Keystone contract. 5 Q. Was there any single -- strike that. 6 Did anything occur in January 2005 that 7 caused you to sway your decision one way or the other? 8 A. Probably the contract modification and an 9 internal evaluation. Having no contact with Victory 10 or with Indeck, but my internal evaluation of the best 11 business decision for Christian Power Equipment, Inc. 12 Q. What, if anything, did Mr. Petcos say when 13 you communicated your decision to him? 14 A. Well, there had been such a long relationship 15 with myself and -- we'll call it the Zurn product 16 line -- all these different company names, he was 17 happy I made that decision. 18 Q. Anything else that you can recall from that 19 conversation? 20 A. No. 21 Q. And what did Mr. Coale say, if anything, that 22 you can recall from that conversation where you 23 informed him that you were going to sign the rep 24 agreement with Indeck Keystone Energy? 25 A. I don't recall anything substantial. I'm</p>
<p style="text-align: right;">Page 55</p> <p>1 Q. And who initiated the call that you're 2 referring to? 3 A. I don't remember if I did or Chris Petcos 4 did. 5 Q. It was between you and Mr. Petcos? 6 A. Yeah. Yes. 7 Q. And to the best of your recollection, what 8 did you say and what did he say in this phone 9 conversation? 10 A. Well, in early January, I was still undecided 11 what I was going to do. I told him that. 12 Q. Anything that you can recall from that 13 conversation? 14 A. Nothing specific, no. 15 Q. When was the next conversation, to the best 16 of your recollection, with anyone at Indeck regarding 17 whether you would continue on as a rep for Victory 18 Energy? 19 A. Could you state that again? 20 Q. When was the next conversation, after the one 21 you just identified sometime in 2005 where you 22 indicated you were still undecided, with anyone at 23 Indeck regarding whether you would continue on as a 24 rep for Victory Energy? 25 A. In late January -- and I don't remember the</p>	<p style="text-align: right;">Page 57</p> <p>1 sure he was pleased that I had chosen to switch to 2 Indeck. 3 Q. Anything else that you can recall from either 4 of those conversations? 5 A. No. 6 Q. When did you actually sign the rep agreement 7 with Indeck Keystone Energy? 8 A. Well, I informed Mark White verbally on 9 January 31. At least that's my -- best I can 10 determine. And the contract was actually executed the 11 11th of March. I don't remember the date that I 12 signed it, but I think that's the date that's on the 13 contract. I sent a letter, an official letter, on 14 March 9th to Victory. 15 Q. What did Mr. White say when you told him that 16 you were going to be cancelling? 17 A. He was disappointed. And it was -- he 18 actually initiated the call -- I remember it 19 distinctly -- because he was calling me to tell me 20 they were cancelling my portion -- a portion of the 21 territory I was going to cover. The Oregon-Washington 22 territory was being taken away and given to a 23 different agency. And in that same phone 24 conversation, I informed him I'd made a decision to 25 cancel the Victory contract.</p>

<p style="text-align: right;">Page 90</p> <p>1 Q. Is it your recollection that you in fact 2 signed a copy of this letter and put it in the mail to 3 Mark White?</p> <p>4 A. Yes. I just couldn't find a copy that I had 5 signed.</p> <p>6 Q. Turning to Exhibit 9 that you were handed 7 prior to the last break. It's got a paper clip on it. 8 And for the record, it's IKE 7980 through IKE 7982. 9 And the first page is an e-mail from Terry Pawlowski 10 to Ron Swabb, with carbon copies to Marty -- to Ron 11 Brown, sorry -- with carbon copies to Marty Swabb, 12 Phil Meehan, and Alan Christian.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. The Subject is Module D Shipment. 16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And it says, "Ron, This is to inform that the 19 second module, Module D/superheater, shipped this 20 morning, May 18, 2004, at 8:20 a.m. Attached are a 21 few pictures showing its departure from Kentube." 22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Do you recall receiving this e-mail in or 25 around May 2004?</p>	<p style="text-align: right;">Page 92</p> <p>1 Q. The last exhibit that I have marked is 2 Christian Deposition Exhibit No. 10, which is IKE 7437 3 through IKE 7442.</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. The first page says "Indeck Keystone Energy, 7 LLC, Boiler Design and Manufacturing." The second 8 says "'O' Series."</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. I just want to ask you about the first two 12 pages for starters. Have you seen this document 13 before?</p> <p>14 A. Yes, I have.</p> <p>15 Q. Or I should say, have you seen an actual 16 color copy of the brochure that this document appears 17 to be a Xerox copy of?</p> <p>18 A. That's what I meant to say.</p> <p>19 Q. Okay. And is this, to the best of your 20 recollection, an accurate copy of the brochure from 21 Indeck Keystone Energy for boilers currently being 22 used?</p> <p>23 A. This is one -- one example of literature 24 they're using.</p> <p>25 Q. Is there -- strike that.</p>
<p style="text-align: right;">Page 91</p> <p>1 A. Yes, I do.</p> <p>2 Q. Were you involved in the Kentube project?</p> <p>3 A. Yes, I was.</p> <p>4 Q. What is to Kentube project?</p> <p>5 A. Kentube is the sub -- the manufacturer. It 6 was subbed out to Kentube. This was a replacement, 7 aftermarket replacement, of a superheater that went 8 into a solid fuel boiler.</p> <p>9 Q. Why is it called the second module?</p> <p>10 A. Well, these shipped in -- I think there were 11 two shipments that left Kentube, and I think this was 12 the second shipment.</p> <p>13 Q. So it's just two different parts of the same 14 superheater, or was there more than a superheater 15 being sold?</p> <p>16 A. I can't remember if we had two sections of a 17 superheater or the superheater and a part of the 18 evaporator. But they were two bundles of tubes.</p> <p>19 Q. Who was the customer on this job?</p> <p>20 A. Um, the plant is Chinese Station. The 21 ownership of that plant is a combination of Covanta 22 and Constellation Energy.</p> <p>23 Q. And the pictures attached are just pictures 24 of the module being shipped, correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 93</p> <p>1 Do you have knowledge of any additional 2 literature that Indeck Keystone Energy is currently 3 using to market and sell Keystone boilers?</p> <p>4 A. I think there is -- there may be a general 5 overview, two-page flyer. There's a lot of Indeck 6 literature that we might also use to qualify who 7 Indeck is with a company. But specifically aimed at 8 package boilers or Keystone package boilers, I'm not 9 sure there's something else.</p> <p>10 Q. Looking at the second page that says "'O' 11 Series," do you see under the words "Capacity Range" 12 it says, "The Keystone 'O' Series water-tube steam 13 generator is capable of producing steam up to 500,000 14 pounds (sic) per hour" -- "pounds steam per hour at 15 design pressures up to 2,000 PSIG and superheated 16 steam up to 1,000 degrees Fahrenheit for both 17 shop-assembled and field-erected designs."</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Is this brochure distributed to customers, to 21 the best of your knowledge?</p> <p>22 A. I think it could be, yes.</p> <p>23 Q. Have you ever sent it out to customers?</p> <p>24 A. I believe I have.</p> <p>25 Q. Nowhere under the Capacity Range does it</p>

<p style="text-align: right;">Page 94</p> <p>1 indicate that Indeck Keystone Energy is not selling 2 boilers below 150,000 pounds per hour of steam; is 3 that correct? 4 A. I don't see anywhere where it qualifies that. 5 Q. Are there additional pages to this brochure 6 that are missing that would indicate a limitation on 7 the steam capacity for boilers offered by Indeck 8 Keystone Energy, to the best of your knowledge? 9 A. No. 10 Q. Do you currently have any proposals that are 11 out for consideration right now by customers with any 12 Indeck entity? 13 A. Yes, I do. 14 Q. How many? 15 A. I don't know. 16 Q. More than five? 17 A. Yes. 18 Q. Are any of those proposals, to the best of 19 your knowledge, for water-tube package boilers? 20 A. Yes. 21 Q. Do you know how many of those are out for 22 consideration right now? 23 A. I don't know. 24 Q. Has there been any change in the pricing 25 structure since Indeck Keystone Energy took over the</p>	<p style="text-align: right;">Page 96</p> <p>1 Q. More than \$10,000? 2 A. Yes. 3 Q. I'm talking about money owed to Christian 4 Power. Correct? 5 A. That's correct. 6 Q. More than 20,000? 7 A. No. 8 Q. So somewhere between \$10- and 20,000? 9 A. Yes. 10 Q. Do you recall the pricing on that contract? 11 A. It was approximately \$700,000. 12 MR. SHEEAN: Those are all the questions I 13 have for now. 14 THE VIDEOGRAPHER: There's about 30 minutes 15 left on this tape. 16 MR. WILLIAMS: Is everybody okay with 17 continuing? 18 MR. SHEEAN: Oh, yeah. 19 MR. WILLIAMS: Okay, then let's go. 20 EXAMINATION 21 BY MR. WILLIAMS: 22 Q. Mr. Christian, my name is Bob Williams. I 23 represent Indeck Keystone Energy in this action. 24 Before I begin, I want to just briefly reiterate some 25 of the instructions that Mr. Sheean gave to you.</p>
<p style="text-align: right;">Page 95</p> <p>1 assets from CMI/EPTI? 2 A. I can't answer that. I don't have a price 3 sheet either before or after the exchange. Almost 4 everything is custom, so virtually everything is 5 priced on a one-off basis. It's difficult to compare 6 previous. But my knowledge, to my knowledge, there's 7 not any giant change. 8 MR. SHEEAN: I think I'm just about done. 9 I'm just going through my notes to make sure I didn't 10 miss anything. 11 (Pause in the proceedings.) 12 BY MR. SHEEAN: 13 Q. On Exhibit 11, the last item is a check from 14 Victory Energy. 15 A. Yes. 16 Q. Do you recall that? 17 A. Uh-huh. 18 Q. Are you currently owed any more money from 19 Victory? 20 A. Yes, I am. 21 Q. Do you know how much? 22 A. The balance of that job. I don't think that 23 Victory's been paid the balance of their contract yet, 24 but I don't know. So there's a considerable amount of 25 money still owed.</p>	<p style="text-align: right;">Page 97</p> <p>1 The first is that because the court reporter 2 is taking down my questions and your answers, she can 3 only transcribe what one person is saying at a time. 4 So I'd ask that you finish -- wait until I finish 5 asking my question before you begin giving me your 6 answer. By the same token, I'll wait until you finish 7 your answer before I start to ask my next question. 8 If at any time you don't hear my question or 9 you don't understand it, don't answer it. Tell me you 10 haven't heard it, you haven't understood it, and I'll 11 be glad to repeat it or rephrase it. 12 Do you understand those instructions? 13 A. Yes, I do. 14 Q. Will you comply? 15 A. To the best of my ability. 16 Q. You've been doing a good job so far, so . . . 17 How many employees work for Christian Power 18 Equipment, Inc.? 19 A. Two, besides myself. 20 Q. And who are they? 21 A. Pam Christian, my wife; and Rita Peppin, my 22 inside sales specialist. 23 Q. And you said Ms. Peppin is your inside sales 24 specialist? 25 A. That's correct.</p>